

Unwanted Telephone Marketing Calls

Background

Has your evening quiet time been disrupted or your dinner been interrupted by a call from a telemarketer? If so, you're not alone. Consumers are increasingly complaining to the Federal Communications Commission (FCC) about unwanted and uninvited calls to their homes from advertisers and telemarketers.

The Telephone Consumer Protection Act (TCPA) of 1991 was created in response to consumer concerns about the growing number of unsolicited telephone marketing calls to their homes and the increasing use of automated and prerecorded messages. The FCC has rules to aid consumers who wish to limit these uninvited calls.

Telephone Solicitations

A "telephone solicitation" is a telephone call that acts as an advertisement. Even if you have an unlisted, non-listed, or non-published telephone number, you may still receive unsolicited telephone calls. In some cases unlisted or non-listed numbers can be obtained from a directory assistance operator. They, along with non-published numbers, may be sold to other organizations or people with whom you have done business. Some sales organizations call all numbers in numerical order for a neighborhood or area.

The FCC's rules prohibit telephone solicitation calls to your home before 8 am or after 9 pm. Anyone making a telephone solicitation call to your home must provide his or her name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity may be contacted.

The term "telephone solicitation" does not include calls or messages placed with the receiver's prior consent, regarding a tax-exempt non-profit organization, or from a person or organization with whom the receiver has an established business relationship. An established business relationship exists if you have made an inquiry, application, purchase, or transaction regarding products or services offered by the person or entity involved. Generally, you may put an end to that relationship by telling the person or entity not to place any more solicitation calls to your home.

Automatic Telephone Dialing Systems and Artificial or Prerecorded Voice Calls

Automatic telephone dialing systems, also known as "autodialers," also generate a lot of consumer complaints.

Autodialers produce, store and dial telephone numbers using a random or sequential number generator. Autodialers are usually used to place artificial (computerized) or prerecorded voice calls. Except for emergency calls or calls made with the prior express consent of the person being called, autodialers and any artificial or prerecorded voice messages may not be used to contact numbers assigned to:



- any emergency telephone line;
- the telephone line of any guest or patient room at a hospital, health care facility, home for the elderly, or similar establishment;
- a paging service, cellular telephone service, or other radio common carrier service, if the person being called would be charged for the call; or
- any other service for which the person being called would be charged for the call.

Calls using artificial or prerecorded voice messages - including those that do not use autodialers – may not be made to residential telephone numbers except in the following cases:

- emergency calls needed to ensure the consumer's health and safety;
- calls for which you have given prior consent;
- non-commercial calls;
- calls which don't include any unsolicited advertisements;
- calls by, or on behalf of, tax-exempt non-profit organizations; or
- calls from entities with which you have an established business relationship.

Calls using autodialers or artificial or prerecorded voice messages may be placed to businesses, although the FCC's rules prohibit the use of autodialers in a way that ties up two or more lines of a multi-line business at the same time.

If an autodialer is used to deliver an artificial or prerecorded voice message, that message must state, at the beginning, the identity of the business, individual, or other entity initiating the call. During or after the message, the caller must give the telephone number (other than that of the autodialer or prerecorded message player that placed the call) or address of the business, other entity, or individual that made the call. It may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

Autodialers that deliver a recorded message must release the called party's telephone line within 5 seconds of the time that the calling system receives notification that the called party's line has hung up. In certain areas there might be a delay before you can get a dial tone again. Your local telephone company can tell you if there is a delay in your area.

How to Reduce the Number of Telephone Solicitation Calls Placed to Your Home

The FCC requires a person or entity placing live telephone solicitations to your home to maintain a record of your request not to receive future telephone solicitations from that person or entity. A record of your do-not-call request must be maintained for ten years. This request should also stop calls from affiliated entities if you would reasonably expect them to be included, given the identification of the caller and the product being advertised. Each time you receive a call from a different person or entity, though, you must request that that person or entity not call you again. Tax-exempt non-profit organizations are not required to keep do-not-call lists.

When you receive telephone solicitation calls, clearly state that you want to be added to the caller's do-not-call list. You may want to keep a list of those places that you have asked not to call you.



The Direct Marketing Association (DMA) sponsors the Telephone Preference Service (TPS) which maintains a do-no-call list. DMA members are required to use this list. Once you register, your name stays on file for 5 years. You may register (for free) by mailing your name, phone number and signature in a letter to:

DMA Telephone Preference Service
Box 643
Carmel, NY 10512

You can also register online (cost \$5.00) at www.dmaconsumers.org.

Registering your number with the TPS should prevent sales calls from all companies that belong to the DMA. Questions about the DMA's registration program should be sent to the DMA at this address. While registering with the DMA should reduce the number of unsolicited calls you receive at your home, it probably will not stop unwanted calls altogether.

Finally, many states now have statewide "no-call" lists for residents in that state. Contact your state's consumer protection office or the public utilities commission (PUC) to see if your state has such a list.

Actions You Can Take Against Telephone Solicitation Calls Made in Violation of the Rules

You have recourse against entities or persons who continue to call you after you have requested to be placed on a "do not call" list. Some states permit you to file law suits against the violators; you may be awarded \$500 in damages or actual monetary loss, whichever is greater. This amount may be tripled if you are able to show that the caller willfully and knowingly violated do-not-call requirements.

States themselves may initiate a civil suit in federal district court against any person or entity that engages in a pattern or practice of violations of the TCPA or FCC rules. If you have questions for your state regarding unsolicited telephone marketing, you may contact your local or state consumer protection office or your state Attorney General's office. These numbers should be listed in the government section of your telephone directory, or you can obtain them by calling directory assistance.

What the FCC Can Do to Help

While the FCC may not award monetary or other damages, it can give citations or fines to those violating the TCPA or other FCC rules regarding unsolicited telephone marketing calls. If you would like to send the FCC a complaint about suspected violations of the TCPA or of the FCC's rules, you can file it by e-mail (fccinfo@fcc.gov) by the Internet (www.fcc.gov/cgb/complaints.html), by telephone 1-888-CALL-FCC (1-888-225-5322) voice, 1-888-TELL-FCC (1-888-835-5322) TTY, or by mail:



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Complaints
445 12th Street, SW
Washington, DC 20554

Include the following in your complaint:

- your name, address, and daytime phone number;
- the action you are requesting of the violator;
- the date you requested to be added to the organization's do-not-call list, and the name of the individual with whom you spoke;
- the home or business telephone number the solicitor gave;
- the name, address, and telephone number of the organization placing the calls; and
- the dates and times you received calls from the organization.

Consumers who file complaints with the FCC retain their private right of action.

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To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on www.fcc.gov/cgb/emailservice.html.

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